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DEPARTMENT FOR EUR/SE

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SUBJECT: TURKEY UNDER FIRE FOR HIGH-PROFILE SPEECH CASES

Classified by Ambassador Ross Wilson; reasons 1.4 b and d.

11. (C) Summary: Turkish prosecutors have recently opened a number of speech-related cases against high-profile writers and intellectuals, drawing sharp criticism from EU Enlargement Commissioner Rehn and others. The number of such cases has actually dropped in recent years. However, political activists unknown in the West were often jailed in the past for controversial speech, whereas today well-known figures like novelist Orhan Pamuk, emboldened by recent legal reforms, are testing the new boundaries of free speech. A GOT official averred to us that prosecutions for non-violent speech will cease once courts adjust to the reforms. However, the fundamental problem lies in the un-reformed mentality of GOT officials, starting with PM Erdogan, who have yet to fully accept freedom of speech in its broadest form as a core value. End Summary.

Pamuk, Others Charged for Statements

12. (C) In the wake of the historic October 3 opening of Turkey's EU accession talks, a series of high-profile court cases has raised doubts about the country's commitment to freedom of expression. Intellectuals in the West continue to rally in support of Turkish novelist Orhan Pamuk, who faces criminal charges for saying that one million Armenians and 30,000 Kurds have been killed in Turkey; his trial is set to begin December 16. Since October 3, Turkish prosecutors have pursued trumped-up charges against a number of other well-known journalists and intellectuals. Hrant Dink, editor of the Istanbul-based Armenian community newspaper Agos, has been convicted of "insulting Turkish identity." Prosecutors have charged publisher Fatih Tas with insulting "Turkish identity" and Ataturk by publishing a Turkish edition of a book on the arms trade by an American scholar. Professors Baskin Oran and Ibrahim Kaboglu are preparing to defend themselves against charges of "humiliating the judiciary" and "inciting hatred" in a report they prepared on minorities in Turkey. The Supreme Court recently upheld the 2002 conviction of journalist Burak Bekdil on criminal charges for a column he wrote about corruption in the judiciary.

Rehn Calls Cases "Particularly Serious"

¶3. (U) This trend has not escaped the EU's attention. During a November 23 speech before the EU-Turkey Joint Parliamentary Committee, Enlargement Commissioner Rehn listed freedom of speech as the top priority the GOT needs to address to advance its candidacy. Rehn warned that the recent, high-profile cases are "of particularly serious concern" and called on the GOT to "ensure that the judiciary system functions in line with European standards." Rehn accused members of the Turkish judiciary of acting "as if they had not noticed that Turkey is a member of the Council of Europe and negotiating for membership in the EU, where pluralism and free speech are basic values which cannot be compromised."

¶4. (U) Turkey has made progress on freedom of expression in recent years. The capture of PKK leader Abdullah Ocalan in 1999 helped reduce, somewhat, the state's sensitivity to use of the Kurdish language and the open expression of the Kurdish cultural identity. The EU reform process has further extended the boundaries of expression on a range of sensitive topics. Prosecutors are opening fewer court cases based on controversial, but non-violent, expression, and courts are acquitting a higher proportion of defendants in such cases.

Intellectuals Emboldened By Reforms

¶5. (C) So what explains the recent series of high-profile prosecutions? Oya Aydin, attorney for professors Oran and Kaboglu, told us the new boundaries on expression are broader than before, but less clear. In the past, she said, student activists and union organizers unknown in the West were

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routinely prosecuted and jailed for speaking out, and the outside world paid little attention. Today, well-known figures like her clients, and Pamuk, feel emboldened by the reform process. They are testing the new boundaries, and regularly finding themselves on the wrong side. Five years ago, Baskin Oran and Orhan Pamuk would not have dared to say what they said, Aydin averred.

¶6. (U) Prosecutors charged Oran, Ankara University international relations professor, and Kaboglu, Marmara University law professor, for their roles as principal authors of a 2004 report on minorities in Turkey. The report, adopted by the GOT's Human Rights Consultation Board, stated that Turkey continues to apply a narrow, legalistic definition of "minority" based on a misinterpretation of the 1923 Lausanne Treaty. The report further noted that non-Muslim Turkish citizens are effectively barred from careers in state institutions, and called on the GOT to adopt a broader concept of minority consistent with contemporary Western societies.

¶7. (U) The professors are charged under two articles of the Turkish Penal Code: Article 301, which outlaws speech that "humiliates" the government, the state and its institutions, "Turkish identity," or Ataturk; and Article 216, which prohibits speech that incites "hatred or enmity" in a manner that threatens public order. The indictment is typical of Turkey's free speech cases. Prosecutors often seek to punish those who criticize state institutions, on the grounds that such criticism constitutes a security threat.

Vague Laws Fail to Protect Speech

¶8. (U) Like many of our contacts, Burak Bekdil told us the problem with Turkey's speech-related laws is that the concepts are not defined. What does it mean, for example, to "humiliate" the state? And at what point does critical speech threaten public order? This lack of definitional clarity -- gained in the U.S., for example, through decades

of case law -- offers prosecutors broad latitude to press charges.

¶9. (C) Bekdil was convicted in 2002 of "insulting the judiciary" in a column he wrote asserting that the Turkish judicial system is corrupt and that "an ordinary Turk would probably have one in a million chance for a fair trial if he is foolish enough to trust Turkish courts and judges." The Supreme Court in November upheld the verdict. Bekdil noted to us that the judge who initiated the case against him is currently on trial for corruption, essentially proving Bekdil's thesis.

¶10. (C) The court handed Bekdil a 20-month suspended prison sentence, meaning that he could be imprisoned if he is convicted for the same crime within the next five years. This will have a chilling effect on his writing. "I would be crazy to criticize the judiciary again," he said. Official Turkey has not yet accepted the idea that speech-related prosecutions constitute harassment that inhibits free expression regardless of the final verdict. Constitutional Court President Tugcu, for example, recently dismissed the importance of the Pamuk case by assuring us that Pamuk would not be imprisoned, echoing comments we hear often from GOT officials.

MOJ Official: Courts Need Time to Adjust

¶11. (C) Aykut Kilic, foreign relations director at the Ministry of Justice, averred to us that Turkey's speech-related problems will be solved with time. The Penal Code has recently been amended, and judges are adjusting to the new language. If lower courts make mistakes, he said, the appeals court will overrule them and establish the kind of jurisprudence that will prevent such prosecutions in the future. Kilic maintained that the most egregious cases are pursued by older prosecutors who are not willing to adapt to

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the reforms.

¶12. (C) Aydin, however, rejects that argument. She noted that the prosecutor who opened the case against Oran and Kaboglu was appointed by the ruling AK Party (AKP) and is known to be close to the AKP leadership. Moreover, FM Gul and other high-level GOT officials angrily and publicly denounced her clients when they released their report on minorities.

¶13. (C) Like other contacts, Aydin pointed to the mentality of Turkish officials as the real obstacle to free expression, rather than the wording of the Penal Code. Aydin referred to the numerous speech-related lawsuits PM Erdogan has brought against cartoonists who have lampooned him, as well as against writers and demonstrators whose speech he considered personally insulting, as evidence that the GOT leadership has not embraced the Western concept of free expression. Yusuf Alatas, president of the Human Rights Association, said the PM's thin skin is a symptom of a society where the "sacred state" and its leaders are viewed as a father who always knows what is best. Our leaders still think like sultans, Alatas said.

Comment: Standing Voltaire on His Head

¶14. (C) Voltaire defined the Western concept of free speech when he said he would "defend to the death" the right of another to disagree with him. We can deal with individual cases, even high-profile ones, and perhaps the judiciary will gradually get its house in order. The core problem, though, remains Turkey's leaders, who, despite recent reforms, are prepared to defend only the rights of those who agree with

them.

¶15. (C) PM Erdogan was once jailed for reciting an Islamic poem. The experience has led him to support those like-minded Turks who, for example, want to criticize the official ban on headscarves in universities. But he has shown no tolerance for those who criticize him or his government, or who speak out on sensitive topics unrelated to Islam. While there is broad freedom of expression in Turkey, it will require additional work to convince Turks that this must include the right to criticize and clear guarantees to protect that right.

WILSON